

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846  
MICHIGAN, .  
 . Detroit, Michigan  
 . December 16, 2013  
Debtor. . 10:02 a.m.  
 . . . . .

HEARING RE. APPLICATION TO EMPLOY LAZARD FRERES & CO., LLC,  
AS FINANCIAL ADVISOR FILED BY RETIREE COMMITTEE  
OFFICIAL COMMITTEE OF RETIREES

MOTION OF THE DETROIT RETIREMENT SYSTEMS TO CERTIFY THIS  
COURT'S ELIGIBILITY RULING FOR DIRECT APPEAL TO THE SIXTH  
CIRCUIT COURT OF APPEALS; MOTION REQUEST FOR CERTIFICATION  
FILED BY CREDITOR MICHIGAN COUNCIL 25 OF THE AMERICAN  
FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES, AFL-CIO  
AND SUB-CHAPTER 98, CITY OF DETROIT RETIREES; MOTION OF THE  
RETIREE ASSOCIATION PARTIES TO CERTIFY "OPINION REGARDING  
ELIGIBILITY" AND "ORDER FOR RELIEF UNDER CHAPTER 9 OF  
THE BANKRUPTCY CODE" FOR DIRECT APPEAL TO THE COURT OF  
APPEALS FILED BY INTERESTED PARTIES DETROIT RETIRED  
CITY EMPLOYEES ASSOCIATION, SHIRLEY V. LIGHTSEY, RETIRED  
DETROIT POLICE AND FIRE FIGHTERS ASSOCIATION, DONALD  
TAYLOR, CREDITORS SHIRLEY V. LIGHTSEY, DONALD TAYLOR;  
MOTION OF THE OFFICIAL COMMITTEE OF RETIREES REQUEST FOR  
CERTIFICATION OF THE ELIGIBILITY DETERMINATION FOR DIRECT  
APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE  
SIXTH CIRCUIT PURSUANT TO 28 U.S.C. SECTION 158(D)(2) AND  
FEDERAL RULE OF BANKRUPTCY PROCEDURE RULE 8001(F) FILED BY  
RETIREE COMMITTEE OFFICIAL COMMITTEE OF RETIREES

MOTION OF THE DEBTOR, PURSUANT TO SECTIONS 105 AND 502 OF  
THE BANKRUPTCY CODE, FOR ENTRY OF AN ORDER APPROVING  
ALTERNATIVE DISPUTE RESOLUTION PROCEDURES TO PROMOTE THE  
LIQUIDATION OF CERTAIN PRE-PETITION CLAIMS FILED BY  
DEBTOR IN POSSESSION, CITY OF DETROIT, MICHIGAN

BEFORE THE HONORABLE STEVEN W. RHODES  
UNITED STATES BANKRUPTCY COURT JUDGE

## APPEARANCES:

For the Debtor: Jones Day  
 By: JEFFREY B. ELLMAN  
 1420 Peachtree Street, N.E., Suite 800  
 Atlanta, GA 30309-3053  
 (404) 581-8309

Jones Day  
 By: CORINNE BALL  
 222 East 41st  
 New York, NY 10017-6702  
 (212) 326-7844

For the Official Committee of Retirees: Dentons US, LLP  
 By: CLAUDE MONTGOMERY  
 1221 Avenue of the Americas  
 New York, NY 10020-1089  
 (312) 632-8390

For Retirement Systems (General Retirement System of the City of Detroit and Police and Fire Retirement System of the City of Detroit: Arnold & Porter, LLP  
 By: LISA HILL FENNING  
 44th Floor  
 777 South Figueroa Street, #4400  
 Los Angeles, CA 90017-5844  
 (213) 243-4019

For Michigan Council 25 of the American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO and Sub-Chapter 98, City of Detroit Retirees: Lowenstein Sandler, LLP  
 By: SHARON L. LEVINE  
 PHILLIP J. GROSS  
 65 Livingston Avenue  
 Roseland, NJ 07068  
 (973) 597-2374

For the Detroit Fire Fighters Association, the Detroit Police Officers Association and the Detroit Police Lieutenants & Sergeants Association: Erman, Teicher, Miller, Zucker & Freedman, P.C.  
 By: BARBARA A. PATEK  
 400 Galleria Officentre, Suite 444  
 Southfield, MI 48034  
 (248) 827-4100

APPEARANCES (continued):

For Deborah Ryan: Goodman & Hurwitz, PC  
 By: WILLIAM GOODMAN  
 1394 East Jefferson Avenue  
 Detroit, MI 48207  
 (313) 567-6170

For Various Plaintiffs: Romano Law, PLLC  
 By: DANIEL G. ROMANO  
 23800 Woodward Avenue  
 Pleasant Ridge, MI 48069  
 (248) 750-0270

In pro per: JEFFREY SANDERS, Creditor  
 16599 Hubbell Street  
 Detroit, MI 48235-4030

Also Present: ANDREW YEARLEY  
 Lazard Freres & Co., LLC  
 30 Rockefeller Plaza  
 New York, NY 10020

ROBERT M. FISHMAN, Fee Examiner  
 Shaw, Fishman, Glantz & Towbin, LLC  
 321 North Clark Street, Suite 800  
 Chicago, IL 60654

EDWARD V. KEELEAN  
 11th Floor Buhl Building  
 Detroit, MI 48226

Court Recorder: Letrice Calloway  
 United States Bankruptcy Court  
 211 West Fort Street  
 21st Floor  
 Detroit, MI 48226-3211  
 (313) 234-0068

Transcribed By: Lois Garrett  
 1290 West Barnes Road  
 Leslie, MI 49251  
 (517) 676-5092

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1 THE CLERK: All rise. Court is in session. Please  
2 be seated. Case Number 13-53846, City of Detroit, Michigan.

3 THE COURT: One moment, please. Good morning. Is  
4 there any objection to hearing the Lazard application to  
5 employ first?

6 MR. ELLMAN: No objection, your Honor.

7 THE COURT: All right. Then let's begin with that.

8 MR. MONTGOMERY: Good morning, your Honor. Claude  
9 Montgomery, Dentons US, LLP, for the Official Committee of  
10 Retirees. Per your request on an order dated November 27 at  
11 Docket Number 1854, you requested that a representative of  
12 Lazard be here, and Mr. Andrew Yearley is in the courtroom,  
13 your Honor.

14 THE COURT: Okay. Would you ask him to step  
15 forward?

16 MR. MONTGOMERY: Mr. Yearley, come forward. He is  
17 not an attorney, so if you would like to put him in the  
18 box --

19 THE COURT: Oh, no. That's all right. He can stand  
20 right there at the lectern with you. What is your name, sir?

21 MR. YEARLEY: Andrew Yearley.

22 THE COURT: Would you spell that last name for us,  
23 please?

24 MR. YEARLEY: Sure. Y-e-a-r-l-e-y.

25 THE COURT: And what is your position?

1 MR. YEARLEY: I am a managing director in the  
2 restructuring practice at Lazard.

3 THE COURT: Okay. And what is your assignment in  
4 connection with the City of Detroit case?

5 MR. YEARLEY: So myself and a team that works with  
6 me represent the Official Committee of Retirees as their  
7 financial advisor and investment banker.

8 THE COURT: Are you the head of this group?

9 MR. YEARLEY: I share the engagement with another  
10 senior partner, Ron Bloom, but, yes, the two of us are  
11 managing the assignment.

12 THE COURT: Okay. What's your fee?

13 MR. YEARLEY: It's a fixed monthly fee of \$175,000 a  
14 month plus reimbursable expenses.

15 THE COURT: So what will you and the other members  
16 of the firm assigned to this case do for \$175,000 a month?

17 MR. YEARLEY: So we've been working since early  
18 September and essentially focused on four or five areas. The  
19 first would be diligencing and analyzing the city's ten-year  
20 financial forecast that reflects the cash flows that could  
21 come out of the city over the next ten years. We obviously  
22 are also looking at some of the key assets in the case,  
23 whether that be Detroit Water and Sewer, Detroit art, land,  
24 any other asset that potentially could be of value to the  
25 creditors.

1 THE COURT: What does "looking at" mean?

2 MR. YEARLEY: So as an example, on Detroit Water and  
3 Sewer, we have a group of professionals that work alongside  
4 us at Lazard who are specialists in infrastructure assets,  
5 and so we've been taking the city's forecasts and numbers  
6 working across from Conway MacKenzie, E&Y, Miller Buckfire to  
7 sort of understand, as an example, that asset, its cash  
8 flows, its value, et cetera, so that would be one example,  
9 digging into the numbers, understanding the business model,  
10 understanding the various alternatives that could come out of  
11 Water and Sewer.

12 Similar sort of function on the city's cash flows,  
13 so looking in as much detail as possible into the operating  
14 forecasts of the city, its revenues, its expense base, its  
15 prospects going forward. Inclusive in that because it's  
16 included in the city's ten-year forecast is the reinvestment  
17 program, so how does the city intend to spend money and  
18 reinvest in the city, whether that be blight or otherwise, so  
19 understanding the basis of all that and giving our committee  
20 a view and an opinion on those forecasts.

21 THE COURT: And what are your qualifications to do  
22 this work?

23 MR. YEARLEY: So I've been at Lazard for 13 years in  
24 the restructuring practice. I have been in the restructuring  
25 world for over 20 years advising in both in-court and out-of-

1 court restructuring assignments. I lead our team in our New  
2 York office on the restructuring side and, again, have a long  
3 history with the folks that make up our team of representing  
4 distressed companies, creditors, et cetera.

5 THE COURT: Is this your first municipal case?

6 MR. YEARLEY: It is.

7 THE COURT: Are we paying for your learning curve?

8 MR. YEARLEY: No.

9 THE COURT: How can you assure us of that?

10 MR. YEARLEY: I think many of the issues that the  
11 city faces are fundamentally issues that we see in the  
12 private sector, and so whether it's analyzing cash flows,  
13 business plans, assets -- there's obviously a municipal  
14 overlay here that makes this somewhat different, including  
15 the Chapter 9 filing. I also work with folks --

16 THE COURT: Well, I'll grant you that on the Detroit  
17 water side.

18 MR. YEARLEY: Um-hmm.

19 THE COURT: But the art issue is certainly unique to  
20 municipalities. Yes?

21 MR. YEARLEY: It is.

22 THE COURT: The quality of life issues that you say  
23 you're going to analyze are unique to municipalities. Yes?

24 MR. YEARLEY: They are.

25 THE COURT: What were you going to say when I

1 interrupted you?

2 MR. YEARLEY: So we have other professionals on the  
3 team as well who have worked extensively in sort of  
4 infrastructure assets or municipal-type work, so, as an  
5 example, we're currently doing work for the City of  
6 Philadelphia around their analysis around budgeting,  
7 privatization of assets, et cetera. Ron Bloom, who is my co-  
8 partner on this, has a long history in dealing with both  
9 government and union matters. He's worked extensively with  
10 the steelworkers union, worked within the TARP program in  
11 government for the last four to five years before rejoining  
12 the firm, so we do have a wealth of knowledge within the team  
13 of these aspects of the case as well.

14 THE COURT: What cities has he worked on or with?

15 MR. YEARLEY: Well, he actually touched on Detroit  
16 fairly extensively because, as the car czar, as he was so  
17 named, in working with the restructurings of GM and Ford and  
18 Chrysler, it was much --

19 THE COURT: I asked what municipalities he'd worked  
20 on.

21 MR. YEARLEY: He has not worked on a municipality.

22 THE COURT: How many hours a month does your  
23 engagement involve?

24 MR. YEARLEY: I can speak to the work we've done to  
25 date in terms of the hours, so in September and October we



1 billed a little short of a thousand hours. The month of  
2 November is probably in the 400-hour neighborhood, so that's  
3 the order of magnitude.

4 THE COURT: I asked you earlier about your fee. You  
5 told me 175,000 a month.

6 MR. YEARLEY: Correct.

7 THE COURT: Wasn't there some other aspect of your  
8 fee? Help me recall.

9 MR. MONTGOMERY: You're talking about the  
10 transaction fee?

11 THE COURT: Yes. What is that fee?

12 MR. YEARLEY: So it's not determined. What we've  
13 included in our letter is the opportunity in the event  
14 there's an agreement between ourselves, the committee, and  
15 the city to pay a final transaction fee based on the outcome  
16 of the case.

17 THE COURT: Mr. Montgomery, given Sections 903 and  
18 904 of the Bankruptcy Code, why is it appropriate for your  
19 experts to be looking into the city's decisions regarding its  
20 budgeting?

21 MR. MONTGOMERY: Your Honor, to the extent that that  
22 budgeting will form the basis of a plan which the city hopes  
23 to be consensual, our committee will have a view as to how  
24 that budgeting matches what they have learned from Lazard  
25 with respect to what is possible, and, therefore, it will

1 know what choices the city is making and proposes to bargain  
2 with the city over those choices. Obviously if the city  
3 crams a plan down without the consent of the Retiree  
4 Committee, it will do so based upon whatever cash flow  
5 forecasts and other asset utilizations it will describe to  
6 the Court, but ultimately I think it is the notion, certainly  
7 not the prediction, but the notion that the committee will be  
8 a participant in a negotiated solution to the City of  
9 Detroit's plan of arrangement.

10 THE COURT: I think our fee examiner, Mr. Fishman,  
11 may be on the line. Mr. Fishman, are you there?

12 MR. FISHMAN: Yes, your Honor, I'm here.

13 THE COURT: Hold on. We're going to crank up your  
14 volume a little bit. Can you hear me okay?

15 MR. FISHMAN: I hear you just fine.

16 THE COURT: Do you have any questions for Mr.  
17 Yearley?

18 MR. FISHMAN: I do not. I have reviewed the order  
19 that the parties negotiated, and I understand it, and it does  
20 not, in my mind, pose any unique problems. And most of the  
21 rest of what they're talking about are really substantive  
22 issues as to which I'm not sure my opinion matters.

23 THE COURT: And the record reflect that the -- the  
24 terms of the employment have been agreed to by the city?

25 MR. MONTGOMERY: They have, your Honor, and

1 specifically there is a stipulation that appears at Docket  
2 1832 that reflects that, including the doubly expressed  
3 caveat that the city has not consented to the transaction  
4 fee.

5 THE COURT: Okay. All right. If you have not  
6 already, I will authorize you to submit an order granting  
7 this motion through our order processing program. Chris, do  
8 we have that already, or do we need it again? I'm sorry?

9 THE CLERK: I don't see it here.

10 THE COURT: Okay. Will you do that for us?

11 MR. MONTGOMERY: We will resubmit the stipulation  
12 and formal order.

13 THE COURT: Okay.

14 MR. MONTGOMERY: Thank you, your Honor.

15 THE COURT: Thank you for coming today, sir.

16 MR. YEARLEY: Thank you.

17 THE COURT: Okay. One more moment, please. Okay.  
18 So it doesn't really matter to me which we do next. The next  
19 one on the list is the certification motion, and then we have  
20 the issue regarding the ADR procedures. Does anyone have any  
21 preference as to which order we proceed? No? All right.  
22 Well, then let's do certification first.

23 I guess my question for everyone who has a stake in  
24 the outcome of this is whether anyone objects to the Court's  
25 certification of the appeals of the eligibility order to the

1 Court of Appeals. No objection? Let me just ask you what  
2 procedural issues any of you see, if any, that might arise  
3 from the question about whether an eligibility order is a  
4 final order or not. I'm not asking you what your position is  
5 on the question of whether eligibility is a final order or  
6 not. I'm asking you what procedural issues might arise from  
7 that question arising.

8 MS. FENNING: If I may, your Honor, Lisa Fenning of  
9 Arnold & Porter appearing on behalf of the Retirement  
10 Systems. Since we filed the first motion, the other moving  
11 parties have agreed that I will respond first.

12 THE COURT: Okay.

13 MS. FENNING: This may be a short hearing, based on  
14 your comment, but as far as the procedural issues are  
15 concerned, Rule 8003(d) should take care of any procedural  
16 question relating to whether it's final order or  
17 interlocutory order. As part of the amendments to two  
18 thousand -- enacted in 2005, the rule was intended to  
19 facilitate exactly this kind of a proceeding to jump over  
20 some of the procedural hoops to smooth the pathway, so in  
21 theory you do not have to file motion for leave to appeal to  
22 cover the base if it might be deemed interlocutory. The  
23 Court of Appeals has the jurisdiction under the amendments to  
24 158 and this rule to decide that for itself. It can either  
25 deem it to be a motion for leave to appeal and grant the

1 certification as it chooses or it can treat it as a final  
2 order, so the procedural next step would be the motion to  
3 certify -- for leave to certify to the appellate court, and  
4 then they grant or they don't.

5 THE COURT: So you say "the next step." You mean  
6 the next step after this Court enters a certification?

7 MS. FENNING: Absolutely, your Honor, but you're  
8 talking about the procedural next step and whether there are  
9 any obstacles. There should not be. As to the scope of  
10 exactly what the Court of Appeals wants to hear, it will  
11 decide. The issue that goes up is the order. The order is  
12 two paragraphs, simple, straightforward, except for all the  
13 imbedded issues which resulted in the 143-page order, but the  
14 Court will determine that, and the Court can decide whether  
15 it's interlocutory or final, and it can choose to hear it  
16 regardless of which one it is.

17 THE COURT: Okay. In connection with a  
18 certification that this Court would enter, what kinds of  
19 supporting statements under the rule do I need to make, if  
20 any, or is it just simply a certification? I think I need to  
21 find that one of the statutory grounds is met; right?

22 MS. FENNING: Yes, your Honor, but it's --

23 THE COURT: What else?

24 MS. FENNING: It's been stipulated this is a matter  
25 of great public importance, which is --

1 THE COURT: Right.

2 MS. FENNING: -- one of the grounds. It would be  
3 helpful if you would determine that this is a discrete issue  
4 that is -- that warrants expedited treatment on appeal  
5 because it could help resolve the issues in this case. We  
6 are going to be seeking expedited treatment in the Court of  
7 Appeals. If they are willing to go along with us, we would  
8 be seeking a briefing schedule that could conceivably, if  
9 everything fell into place, lead to a hearing and a decision  
10 as early as March or April. We would like to have a decision  
11 before confirmation.

12 THE COURT: What if I don't think that's in the best  
13 interest of the case?

14 MS. FENNING: I'm sorry.

15 THE COURT: What if I don't think that's in the best  
16 interest of the case?

17 MS. FENNING: You don't think that's in the best  
18 interest of the case to clarify the standards that should be  
19 applicable?

20 THE COURT: I'm only asking what if.

21 MS. FENNING: What if? The certification rule is a  
22 mandatory rule.

23 THE COURT: Um-hmm.

24 MS. FENNING: If you do not think it's in the best  
25 interest of the case, the Court of Appeals or the District

1 Court could disagree and authorize that to proceed in any  
2 event. I mean I'm here as appellate counsel.

3 THE COURT: No, no. Don't misunderstand my  
4 question. It's clear enough I have to certify, so that part  
5 is beyond discussion or question here.

6 MS. FENNING: All right.

7 THE COURT: You raised the issue of me making a  
8 recommendation or a statement regarding expediting the  
9 appeal --

10 MS. FENNING: All right.

11 THE COURT: -- as if I agreed with that, and so my  
12 question was what if I don't agree that expediting the appeal  
13 is in the best interest of the case?

14 MS. FENNING: That would be a bit surprising to me  
15 in light of your handling of this matter. I mean it is  
16 ironic in some respects we've now caught up with San  
17 Bernardino even though it started more than a year earlier  
18 since they just granted certification last Friday. The  
19 hearings in this case have stressed the importance of  
20 expediting the decision. Your opinion stressed the  
21 importance of reaching this decision early, getting it  
22 resolved early. To be consistent with all of that, urging an  
23 expedited resolution to the Court of Appeals would be  
24 entirely in line with the handling of this case.

25 THE COURT: Well, but, again, we can talk about

1 whether it's appropriate to request an expedited hearing or  
2 not. That's not really my question at this moment. My  
3 question was if I don't agree that expediting the appeal is  
4 in the best interest of the case, should I say that in the  
5 certification?

6 MS. FENNING: Well, I suppose you could. I would  
7 ask that you not take that position, of course, but we would  
8 ask --

9 THE COURT: Well, let me just ask then the direct  
10 question. Why is expediting the appeal in the best interest  
11 of the case?

12 MS. FENNING: Because if we were able to get a  
13 decision from the Court of Appeal and if the Court of Appeals  
14 agreed with the objections to eligibility, particularly if  
15 the Court of Appeals agreed with the Retirement Systems' view  
16 that even if the case has -- case should go forward, it could  
17 not properly impair pensions, that directive would be  
18 available to inform the parties and the Court in the process  
19 of the confirmation of the plan and would avoid unnecessary  
20 proceedings in this Court going forward with a confirmation  
21 that could be reversed on appeal going back to the original  
22 eligibility finding. That would be my argument.

23 THE COURT: Well, the Court would either affirm or  
24 reverse the eligibility order; right?

25 MS. FENNING: The Court could do three things, in



1 our view. They could affirm, they could affirm with  
2 directions, or they could -- they could reverse with  
3 directions, or they could just flat out reverse. From the  
4 Retirement Systems' viewpoint, it is possible -- the middle  
5 ground would be allowing the case to proceed as eligible but  
6 directing that the pensions not be impaired, and if that  
7 directive came down because the Court of Appeals agreed with  
8 our position, then that would inform the process of  
9 negotiating and confirming a plan. If the Court of Appeals  
10 reversed, we've been retained to take it all the way to the  
11 Supreme Court, if necessary. I doubt we would get an answer  
12 from the Supreme Court within that time period, but we would  
13 hope that the Sixth Circuit would clarify the law.

14 THE COURT: To what extent should the Court inquire  
15 of you and/or the mediator regarding the status of mediation  
16 and take that into account in determining whether to suggest  
17 expedition to the Court of Appeals?

18 MS. FENNING: The Retirement Systems are  
19 participating actively in the mediation process and will  
20 continue to do so. This is a dual track process. Robert  
21 Gordon and Clark Hill will be continuing to move forward on  
22 the bankruptcy level. We'll be parallel tracking at the  
23 appellate level. We are not trying to slow down the  
24 confirmation process. We think the two things have to go in  
25 tandem. And I don't think it will adversely impact the

1 retirement -- the mediation process. The fact that the issue  
2 is undecided on appeal means that the parties can disagree  
3 about what the ultimate outcome will be, but that exists  
4 whether the appeal is fast or slow.

5 THE COURT: Thank you. Would anyone else like to be  
6 heard on any of the questions that I've asked?

7 MS. LEVINE: Good morning, your Honor. Sharon  
8 Levine, and I'm here with Phil Gross, Lowenstein Sandler.  
9 Thank you.

10 THE COURT: Mr. Gross.

11 MS. LEVINE: Your Honor, just addressing briefly the  
12 issue of expediting and whether or not it's in the best  
13 interest of the case or not, our view is slightly different  
14 than that previously expressed. From AFSCME's perspective,  
15 this is an issue of national importance. We're already  
16 seeing across the country the impact that the issue,  
17 especially with regard to the pensions, is having as we are  
18 having dialogues in other jurisdictions in Michigan and  
19 throughout the country. In addition to that, equally  
20 important, perhaps maybe even more important, is your Honor's  
21 ruling with regard to the need to engage in good faith  
22 negotiations before approaching a Chapter 9 setting, and so  
23 for us having those two issues on appeal and decided quickly  
24 could be useful. That is separate and apart from what's  
25 happening in Detroit, which is also important. As your Honor

1 may recall, we tried to negotiate prior to the bankruptcy.  
2 We actually didn't oppose the appointment of the Retiree  
3 Committee. Our response was directed towards actually  
4 getting a seat at that table and participating through that  
5 process. We gave your Honor comments with regard to the  
6 mediation order, which hopefully you found constructive, some  
7 of which we think you adopted. We've been actively  
8 participating in mediation. We hope to actively participate  
9 in negotiating a plan of adjustment. We're not saying that  
10 we should wait or stall because of an appeal, whether it goes  
11 fast or slow. Detroit has serious issues. We intend to  
12 fully engage to try and work through those problems, but we  
13 do think that having these issues certified and having them  
14 decided quickly here and more broadly would be constructive  
15 for everybody. Thank you.

16 THE COURT: So your view is interesting. It holds  
17 that in deciding whether to expedite the Court of Appeals'  
18 consideration of these issues, the Court should take into  
19 account not just what's in the best interest of the case but  
20 also the public importance of the issues themselves.

21 MS. LEVINE: Yes, your Honor. And we think that  
22 that's imbedded in Chapter 9 itself, which recognizes in an  
23 eligibility decision there's not going to be a stay, but  
24 there is likely going to be an appeal, which is probably why  
25 they specifically addressed the fact that you're not going to

1 have a stay.

2 THE COURT: Um-hmm. Thank you.

3 MS. LEVINE: Thank you.

4 MR. MONTGOMERY: Your Honor, in response to your  
5 inquiry regarding expedition, we would -- the Retiree  
6 Committee would support it because, as you said on page 38 of  
7 your opinion, resolution of the pension question is of utmost  
8 importance to confirmation or confirmability of a plan, and  
9 regardless of how the parties negotiate from now until the  
10 conclusion, we think that both the likelihood that the Sixth  
11 Circuit will make a decision soon and the reality, whichever  
12 it does, will help the resolution process. Our clients are  
13 narrowly focused on the harm done to them. There is public  
14 importance, but that's not really what worries them. They're  
15 really worried about the direct harm, and so they would urge,  
16 your Honor, that to the extent you're debating the question  
17 of whether or not expedition is helpful, they would request  
18 that you expedite.

19 THE COURT: You're not telling me that your position  
20 is to suspend mediation pending the appeal?

21 MR. MONTGOMERY: Absolutely not, your Honor.

22 THE COURT: Your client committed to proceeding full  
23 steam ahead on the mediation pending the appeal?

24 MR. MONTGOMERY: Absolutely. As you might expect,  
25 we have --

1 THE COURT: I accept your representation.

2 MR. MONTGOMERY: We have a different perspective on,  
3 you know, what's achievable and why, but, yes, your Honor.

4 THE COURT: Well, okay.

5 MR. MONTGOMERY: Thank you.

6 MS. BALL: Good morning, your Honor. Corinne Ball  
7 of Jones Day for the city. Your Honor, I rise to address the  
8 question that you asked about procedure. We think it's clear  
9 that the order is interlocutory, so, your Honor, we think  
10 that places a burden on the Court to make a finding as to  
11 which it's a controlling question of law, there's substantial  
12 ground for difference of opinion, or that, third, which is an  
13 immediate appeal will materially advance the case clearly  
14 addressed to your discretion.

15 We also think that in terms of having the dual  
16 burden of certifying -- in addition to certifying an  
17 interlocutory order, that your Honor has to find and should  
18 find in order to do that that this case involves a matter of  
19 public importance and that, therefore, should go directly to  
20 the circuit.

21 We note, your Honor, that under the statute, under  
22 158(d) (2) (D), proceedings before your Honor will continue  
23 during the pendency of the appeal even if you do certify,  
24 which I think answers some of the questions that you were  
25 discussing with Mr. Montgomery. While the city believes

1 proceeding with this appeal in the ordinary course is the  
2 right answer, if the Court wishes to certify because it is a  
3 matter of public importance, the city will consent to that  
4 certification, your Honor. If you have any questions, I  
5 would be happy to answer them.

6 THE COURT: What's the city's position on whether  
7 the Court should recommend an expedited appeal or  
8 consideration by the Sixth Circuit?

9 MS. BALL: Your Honor, we are focused on proceeding  
10 with the case before you. If your Honor were to find that  
11 resolution of this appeal would materially advance the case,  
12 then expedition might be in order. On the other hand, your  
13 Honor, we are hopeful that we will continue discussing the  
14 issues that separate the movants this morning from the city  
15 throughout this period. As you know, the city is dedicated  
16 to proceeding as rapidly as possible with its plan moving  
17 towards a plan of adjustment that will hopefully have broad  
18 creditor support. That is our objective. Anything that  
19 detracts from that is not necessarily something we would  
20 support. However, your Honor, we understand the significance  
21 of the decision that your Honor rendered, the importance to  
22 the parties, and perhaps the law itself, so if your Honor  
23 were to certify, we would consent.

24 As to expedition, your Honor, we understand that --  
25 we have looked into the rules before the Sixth Circuit.

1 They, unlike other circuits, do not have a weekly scheduled  
2 motion day to hear certification petitions like some other  
3 circuits. I think my colleague, Judge Fenning, has shared  
4 with your Honor that the time frame, even expedition, looks  
5 to us to be two to three months, in any event, longer if you  
6 don't, so perhaps expedition is -- expedition would be the  
7 only way to accomplish the movant's objective, but rest  
8 assured, your Honor, we will be moving ahead on pursuing  
9 restoring the city's viability and its plan.

10 THE COURT: Thank you. All right. The Court will  
11 enter an appropriate order certifying this matter to the  
12 Court of Appeals. I want to think a bit more on the issue of  
13 whether to say anything about whether the appeal should be  
14 expedited, but I'll do something in the next day or so.

15 And so now let's turn our attention to the other  
16 matter, which is the ADR procedures.

17 MR. ELLMAN: Thank you, your Honor. Jeffrey Ellman  
18 from Jones Day on behalf of the city. We have filed our ADR  
19 procedures motion in the spirit of, as we're talking about,  
20 moving the case along, and we are very anxious to begin this  
21 process. We filed the motion under 105 -- Sections 105 and  
22 502. I'd be happy to provide some background and context to  
23 the process and a little bit of an overview of what we're  
24 trying to accomplish, not very lengthy, or we can just talk  
25 about the objections if the Court prefers.

1           THE COURT: Well, I've read everything, including  
2 your amended proposed order --

3           MR. ELLMAN: Okay.

4           THE COURT: -- so I'm much less interested in the  
5 history than I am in what discussions, if any, you've had  
6 since then and what objections are still outstanding.

7           MR. ELLMAN: That would be fine, your Honor. I can  
8 do that. I can report that we had six or I guess maybe seven  
9 filed objections, depending on how you count them, and four  
10 informal objections. I'd say the majority of them are  
11 resolved. We have four or five, depending on how you count  
12 them, that may be open and that may require the objecting  
13 parties to state where we stand. And I say six or seven  
14 filed objections or four or five resolved because there was a  
15 motion filed this morning. I don't know if your Honor has  
16 seen it.

17          THE COURT: I have.

18          MR. ELLMAN: I had not seen it before I got here  
19 before it was filed, and it was handed to me while you  
20 were -- when we were in court, so I know kind of what it  
21 says, but that hasn't obviously been addressed in any way, so  
22 let me tell you what we have resolved. Then we can talk  
23 about what's open.

24          THE COURT: Mr. Goodman, I will give you every  
25 opportunity to be heard, sir.



1 MR. GOODMAN: My only problem, your Honor, is that I  
2 can't hear very well. I can't hear Mr. Ellman.

3 THE COURT: Oh, well, then you may have a seat right  
4 there in the jury box and perhaps hear best.

5 MR. GOODMAN: Thank you, your Honor. I apologize.

6 MR. ELLMAN: Am I speaking well enough into the  
7 microphone?

8 THE COURT: For my purposes, yes.

9 MR. ELLMAN: Okay. Thank you. All right. Well, as  
10 far as the objections, your Honor, we --

11 THE COURT: Let's get Mr. Goodman situated, and then  
12 you can proceed. Okay. Let us know if we need to make any  
13 other adjustments here.

14 MR. GOODMAN: That's fine. This is fine. I just --

15 THE COURT: Okay. Go ahead, sir.

16 MR. GOODMAN: -- have a bad ear, so to speak.

17 MR. ELLMAN: Well, your Honor, as you know from  
18 reading the procedures and certainly in light of the Court's  
19 concerns in this case, we designed the procedures primarily  
20 to address the tort and litigation claims, and we used the  
21 process that you've seen in the papers with the Wayne County  
22 Mediation Tribunal, which is a well-recognized process, to  
23 adopt into what is I think otherwise sort of a typical -- at  
24 least in our experience, typical kind of ADR process we've  
25 used, so it was never really intended to be used for every

1 kind of claim in the case. We did reserve the right, which  
2 we thought was appropriate, in our discretion and have some  
3 flexibility to use it if -- this process for other kinds of  
4 claims, but we had a number of objections from people saying,  
5 "My claim doesn't really fit in this. Can you confirm it  
6 doesn't fit in this?" And so we have in the revised form of  
7 order -- and we revised it one time since what your Honor has  
8 seen -- excluded the pension claims, the post-employment  
9 benefit claims, the retiree healthcare, for example, labor-  
10 related grievances, workers' compensation claims, the  
11 certificate of participation-related claims. The one we've  
12 added is the general obligation bond debt, and the U.S.  
13 government asked us if we'd exclude their claims, which we  
14 have. Obviously we were never intending to put in claims  
15 that were already in mediation and other procedures, so that  
16 series of exclusions resolves the -- my understanding, the  
17 Retirement Systems' objection, AFSCME's objection, U.S.  
18 government's objection, FGIC, ATU, and Ambac, so that puts  
19 aside -- one, two, three, four, five -- six right there.

20           Then it gets a little more complicated, I would say,  
21 because we have agreements in principle to resolve Mr.  
22 Goodman's objection for Ryan, to the extent it's still  
23 pending because he's moved to substitute a different party,  
24 and the public safety unions' objections. We have had  
25 trouble getting the language in a place where people all

1 agreed to it, but let me explain to you what we tried to  
2 achieve, which we'd be willing to do based on an order of the  
3 Court, whether anyone else agreed to it, as long as your  
4 Honor agreed to it, but the public safety unions' concern,  
5 your Honor, is about the types of claims that are filed that  
6 involve their members, what we called multi-party claims, I  
7 think, in the procedures order. And often the city is sued,  
8 and the members are sued as co-defendants. If we put in the  
9 claim that's been asserted against the city into ADR, what  
10 happens to their indemnification claim, their defense and all  
11 that? And we said it's a very fair point. Really these  
12 should go together into the process. Everyone who's involved  
13 is in the process, so we designed a revision to the  
14 procedures to make sure they got to be in the process. They  
15 would get ADR notices at the same time. Hopefully everything  
16 would be resolved together. If it doesn't get resolved and  
17 people don't agree to go to arbitration, then it'll get  
18 litigated presumably. And if that happens, you know, the  
19 union members are subject to your Honor's extended stay, so  
20 we gave them the right at the end of ADR if there's no  
21 resolution to come in and argue the stay should stay in place  
22 even though the ADR procedures might say it would go away.  
23 That seemed fair to us. And we think in principle that  
24 resolves the union's concerns, and I think on that issue it  
25 probably does, and Ms. Patek can explain if it does or not.

1           The more complicated issue was the Ryan matter,  
2       which your Honor I know is familiar with because it's been  
3       before the Court before. And there was an actual -- there  
4       was litigation over preventing the stay from being lifted,  
5       and you'll see in our proposal what we're asking the Court to  
6       do is, in fact, lift the stay on this matter, which is a  
7       somewhat dramatic change of position, but it's consistent  
8       with paragraph 9 of the ADR procedures which allows the city  
9       to look at claims and in unique or appropriate circumstances  
10      decide this is not a case that's going to settle likely and  
11      it won't benefit from ADR. We're going to take it right --  
12      just lift the stay and let it go be litigated.

13           And for Ryan, although we had litigated about  
14      lifting the stay previously, in the context of having a  
15      program in place where the city understands how it can manage  
16      the cases going through the system, it does feel comfortable  
17      lifting the stay for this matter. I was very concerned when  
18      it didn't have a program, but now it -- you know, we've  
19      talked about it quite a bit, and we've worked very closely  
20      with the city's law department, and Ed Keelean, the deputy  
21      corporation counsel, is here today as well, and so we've  
22      talked about how this would work, and they're very  
23      comfortable with this in this context. So I think that's  
24      sort of easy. We would stipulate to lift the stay, and it's  
25      consistent with the procedures if your Honor approves the

1 procedures. The complicated part and the resolution of it  
2 was that there are two members of the public safety union who  
3 are codefendants, so we had to work out something with the  
4 union about that. And what we did is effectively agree  
5 that -- which is already in our procedures anyway -- we  
6 agreed to confirm specifically that lifting the stay is only  
7 to liquidate the claims. It's not about collection. And  
8 that's true for the public service union members as well  
9 because they're subject to a stay, so if there was a desire  
10 to collect at the end of a judgment having been achieved,  
11 they would have to come back -- the plaintiff would come back  
12 here and ask your Honor to lift the stay as we confirm that  
13 lifting the stay for now is only to liquidate the amounts,  
14 and otherwise the stay would be in place. We confirm that.  
15 We also confirm that the city will continue to defend the two  
16 members of the union who are in this lawsuit with only a  
17 couple of caveats. One is that the defense is conditioned on  
18 the cooperation of these defendants. That's part of the way  
19 this works. They have to -- if they don't cooperate, they  
20 don't show up, they don't necessarily get defended. And the  
21 same thing with indemnification. They will have a right to  
22 seek an indemnification claim but, again, only if they  
23 cooperate, and I guess for both defense and indemnity only if  
24 they don't testify in a way that demonstrates that they were  
25 not acting in the good faith performance of their duties.

1 This is just the standard that applies to these kinds of  
2 cases, so -- but we did give some, I think, significant  
3 assurances that absent those things where defense and  
4 indemnity go away by their nature, we will defend and they  
5 will have an indemnity claim. How the claim gets treated --

6 THE COURT: Suppose there's a dispute as between the  
7 individual employee and the city about whether there was that  
8 kind of cooperation.

9 MR. ELLMAN: Well, that would have to be  
10 adjudicated. I don't know where that would be adjudicated.  
11 That may be something that --

12 THE COURT: Where would it be adjudicated if it  
13 weren't for the bankruptcy?

14 MR. ELLMAN: If I could ask Mr. Keelean that  
15 question, I would appreciate it, your Honor.

16 MR. KEELEAN: It would be resolved by grievance  
17 through arbitration.

18 MR. ELLMAN: Grievance in arbitration.

19 THE COURT: So does this agreement change that?

20 MR. ELLMAN: Absolutely nothing --

21 THE COURT: For example, does it put me in charge of  
22 that decision?

23 MR. ELLMAN: We're not intending to change anything  
24 about that process whatsoever, your Honor.

25 THE COURT: Are you willing to specify that in the

1 order?

2 MR. ELLMAN: I would certainly be. I presume that  
3 that's okay with my client, and he says yes.

4 THE COURT: All right.

5 MR. ELLMAN: Yes, we would be perfectly fine with  
6 that. We were not intending to change any of that. And also  
7 it says in our draft stipulation we put together lifting the  
8 stay the individual members have the right to hire their own  
9 counsel as well if they would like to. Obviously true. So  
10 that's where we stand, so we have sort of an agreement in  
11 principle between the unions and Ryan on that, but getting  
12 the details, especially on the union piece of this, has been  
13 challenging. Now, of course, this morning the Ryan objection  
14 was -- there's a motion to replace Ryan and have a different  
15 party than the objecting party, which we obviously -- maybe  
16 it's not obvious, but we disagree with that motion. We would  
17 oppose that motion. We would not -- I think the plaintiff in  
18 the other matter that Mr. Goodman has is named Swift. I  
19 don't know anything really about this case, but I talked  
20 briefly with Mr. Keelean in advance of the hearing, and  
21 although it may have some similarities to Ryan in the nature  
22 of the kinds of relief being sought, we would not agree that  
23 this is a -- that was an appropriate case to go right into  
24 litigation without the ADR procedure, so we'd oppose the  
25 motion to substitute on whatever grounds it really states,

1    which I haven't really studied, and on the merits we would  
2    oppose, you know, whatever it says about the ADR process for  
3    all the same reasons we were defending the process for  
4    everyone else, so that's where we stand with Ryan, this new  
5    party, Swift, and with the public safety unions, and then  
6    there are two --

7           THE COURT:   Well, but in regard to your concession  
8    regarding Ryan --

9           MR. ELLMAN:   Um-hmm.

10          THE COURT:   -- why agree to allow that case to  
11    bypass ADR, if I can phrase it that way, and not all the  
12    other 1983 actions pending in this District Court?

13          MR. ELLMAN:   Well, I mean I think the answer, your  
14    Honor, is the city will look at these on their merits and  
15    determine which of these causes of action will benefit from  
16    the ADR process based on our discussions with Mr. Goodman and  
17    his client to date, based on evaluating the type of action,  
18    the facts, the likelihood of settlement.  You know, it's a --  
19    it's like a business judgment-type test.

20          THE COURT:   So you want the opportunity to do that  
21    for all the other 1983 actions.  Is that what you're saying?

22          MR. ELLMAN:   Yes, because they're all unique, and  
23    the way the process was put in place is that everyone -- and  
24    we've committed all the tort -- personal injury tort, all  
25    these kinds of litigation cases go into ADR.  We will



1 designate them all into it, but we gave ourselves an escape  
2 hatch because we know that we don't want to waste our time  
3 and everyone else's time. If it looks to us like it's not  
4 really going to be beneficial, we will not do that. And, of  
5 course, the procedures are very flexible. If we start the  
6 process and we begin the first offer exchange procedure and  
7 it looks like this is going nowhere, we have the ability by  
8 agreement to just move this off into litigation, so we want a  
9 process that's efficient. We believe -- I know the city very  
10 much believes that this -- the offer exchange and the Wayne  
11 County MTA process will be very successful in resolving a  
12 number of claims, and they've been doing this for a long  
13 time. And Mr. Keelean and his team have a very good sense of  
14 what makes sense, and they're going to be managing this in  
15 the legal department for the most part, so the process needs  
16 to be a procedure that's going to deal with a lot of claims  
17 that they have to feel comfortable with their staff that they  
18 can deal with, and they're going to make sure that they feel  
19 comfortable that what they do is going to be in the best  
20 interest of the process.

21 THE COURT: Your proposal includes a bar against  
22 filing motions for relief from the stay.

23 MR. ELLMAN: During a period of time, yes, it does.

24 THE COURT: That has the effect of giving the city  
25 the first and really only call on whether ADR will work or

1 not; right?

2 MR. ELLMAN: That is correct, and the idea is that  
3 the debtor is responsible for managing this process, and the  
4 debtor is the focal point of what we project to be certainly  
5 over a thousand claims that we've committed will go into ADR.  
6 And we've given ourselves --

7 THE COURT: Well, but if a particular plaintiff and  
8 obviously their lawyer believes that ADR won't work, why not  
9 give them an opportunity to try to persuade the Court that  
10 that's the case?

11 MR. ELLMAN: Well, we certainly -- there's no reason  
12 you couldn't do that, but our view is that that would be  
13 extremely inefficient. It would be a burden. That would  
14 eliminate or mitigate a lot of the benefit we see in this  
15 program to take some of the relief from the docket off of the  
16 Court and to push people into a process that we think can be  
17 managed. If we're still coming into court every day talking  
18 about whether people should be in ADR, I think it's  
19 problematic, and we really didn't have that many objections.  
20 We did serve every party we know who has sued us and everyone  
21 who's made a demand on us who might sue us or indicated they  
22 might sue us. It's about 1,800. They may not be unique  
23 names. There may be a lot of overlap, but 1,800 people on  
24 the list, and we did not get a lot of responses at the end of  
25 the day, and certainly most the responses were people like

1 the, you know, Retirement Systems --

2 THE COURT: Right.

3 MR. ELLMAN: -- and unions dealing with other  
4 issues. We understand -- and I don't practice in this  
5 jurisdiction for these types of cases, but the Wayne County  
6 MTA process works pretty well is my understanding, and people  
7 understand it and have used it, and so even if we didn't do  
8 this, you know, a court could just send -- your Honor or a  
9 District Court judge could send someone to this process, so  
10 it doesn't seem to us to be an unfair thing to do, and  
11 that -- you know, that could happen in any case, so we think  
12 this is the best way to manage it.

13 Now, there are two other objections I didn't mention  
14 just very briefly. One was by a gentleman, Jeffrey Sanders,  
15 who's a pro se party, filed a case in 2007 having to do  
16 with -- he was arrested for domestic violence charges, and he  
17 asserts some constitutional violations based on that arrest  
18 is my understanding. I couldn't perceive in his filing  
19 really a basis to challenge the ADR procedure, so we would  
20 ask for that to be overruled, which we note in our papers.

21 And then we have Lasalle Town Houses Cooperative  
22 Association, and there are some -- a couple of other  
23 plaintiffs we've called the cooperatives. That one --  
24 there's some indication, based on discussions before the  
25 hearing, that perhaps this is -- our proposal may be

1 acceptable to the cooperatives, and counsel can address that.  
2 This is a punitive class action dealing with the rates that  
3 the water department charges to these residential units,  
4 which they treat as commercial buildings because they're  
5 multi-unit facilities. Just to cut to the chase as to what  
6 we're proposing, they filed also a lift stay motion to  
7 proceed to get a judgment on pre-petition claims, post-  
8 petition claims, and an injunction about the way rates are  
9 charged in the future. The ADR process is not set up to deal  
10 with injunctive relief. It wasn't for that purpose. But  
11 this is a case that's largely about money damages or at least  
12 substantially about money damages, and we believe the ADR  
13 process would be useful. And, of course, in the context of  
14 discussions in an ADR process, the city and the plaintiffs  
15 can agree to other kinds of relief as well, and we think  
16 sitting down and having that discussion would be useful. So  
17 we have proposed that this would go into the ADR process.  
18 We're prepared to put it in, you know, early in the process,  
19 we said within 30 days of the bar date, get the process  
20 started quickly. At the end of that process, we have  
21 committed that the stay will be lifted if there's no  
22 resolution and if it doesn't go to arbitration, which I don't  
23 think it will, and the stay will be lifted. They will get  
24 their stay relief. The only thing we're asking in exchange  
25 for that is that they do attempt to talk to us about

1 resolution to this process. From talking to counsel just  
2 before the hearing, it sounds like perhaps that might be  
3 acceptable. They were thinking about it still. That's where  
4 we are with that objection. That covers all the objections,  
5 your Honor.

6 THE COURT: Thank you.

7 MR. ELLMAN: And if you have any other questions,  
8 I'd be happy to answer them.

9 THE COURT: No.

10 MR. ELLMAN: Thank you.

11 MS. PATEK: Good morning, your Honor. Barbara Patek  
12 on behalf of the Detroit public safety unions. Much of what  
13 Mr. Ellman said is correct. We have -- but we do have some  
14 unresolved issues. A big one, I think, was addressed by the  
15 Court, that as long as the order suggests that if there is a  
16 dispute on indemnification that the ordinary course grievance  
17 arbitration procedure would kick in would resolve a lot of  
18 our issues.

19 We have the following that we raised in our  
20 objection. One is since we filed and sought an extension of  
21 the stay to former public safety union members, we've been  
22 trying to get from the city -- and we understand the  
23 difficulties the city has sometimes with compiling this  
24 information -- a list of the known claims in which current or  
25 former public safety union members have been named as the

1 defendants, and we -- to the extent that the Court is  
2 overruling any part of our objection, we want it clear that  
3 it's not overruling our right to seek that information and to  
4 continue to seek that information because it'll be important  
5 not only to the ADR process but to our ability to file claims  
6 on behalf of those individuals.

7           The indemnification claims -- and this is where I  
8 think there may need and we -- I was working over the weekend  
9 with the city, and we just didn't quite get there. There are  
10 a couple of different buckets. First of all, throughout the  
11 order, it should indicate where it says "public safety union  
12 members," it should be "current or former public safety union  
13 members" because some of these folks are no longer employed,  
14 and, in fact, some of them are leaving their city employment  
15 just because of the difficulty of the circumstances of  
16 continuing to work there.

17           We've got cases -- and I believe, as I read their  
18 order, the only cases that are going to be submitted to ADR  
19 are cases in which the city is a co-defendant. There are  
20 some cases where the city is not named as a defendant. For  
21 example, there's a lift stay motion on the Fulgenzi,  
22 Headapohl case, and so we want it clear that those cases, as  
23 I understand it, will not be going through these ADR  
24 procedures but will be dealt with in the ordinary course.

25           There are also, to my understanding, a category of

1 Section 19 --

2 THE COURT: When you say "dealt with in the ordinary  
3 course," they're stayed until the Court grants relief from  
4 the stay.

5 MS. PATEK: Correct, and through the labor --

6 THE COURT: That's what you mean.

7 MS. PATEK: And they are -- and Mr. Moore, who is  
8 the DPOA's labor counsel, is here in the courtroom today  
9 because I'm not intimately familiar with that process, but my  
10 understanding is through the mediation and in the ordinary  
11 course, labor grievances are proceeding, and these  
12 indemnification claims -- it's a little bit tricky because  
13 they're carving out grievances, but these kind of will fall  
14 into two buckets here, and we just want to --

15 THE COURT: Right.

16 MS. PATEK: -- make sure nothing happens that  
17 prejudices us. Also, to the extent -- and this was raised,  
18 and my understanding is I'm not -- I think the city is  
19 opposing this, but to the extent that any of these --

20 THE COURT: Wait. Let's wind the clock back a  
21 little bit here because I want to be sure I get this right  
22 with you. If there's a dispute between an individual and the  
23 city in a case where the city is not a codefendant --

24 MS. PATEK: Correct.

25 THE COURT: -- about whether the city will indemnify

1 and defend that individual in that case, the stay prohibits  
2 any legal action by the individual against the city to get  
3 that issue resolved. Yes?

4 MS. PATEK: You're talking about the individual  
5 public safety union member.

6 THE COURT: Yes.

7 MS. PATEK: Except to the extent that -- and, again,  
8 I will let Mr. Moore, if the Court would allow it, address  
9 that. I believe that a mechanism is being worked out either  
10 through the mediation process or otherwise where these issues  
11 are being addressed, and I think the city has proposed to  
12 address them in the ordinary course.

13 THE COURT: Okay. And will that resolution be a  
14 part of this order? Is that what you're contemplating, or  
15 something else?

16 MS. PATEK: That resolution will not be a part of  
17 this order, but we want to make it clear that this order is  
18 not addressing the merits of that. We want to carve it out  
19 so that our -- what we're seeking to --

20 THE COURT: Okay.

21 MS. PATEK: -- do is to preserve our rights here.

22 THE COURT: Okay.

23 MS. PATEK: And the way these indemnification claims  
24 arise, sometimes right out the door the city knows -- and I  
25 think there may be only a small handful of these --



1 THE COURT: Right.

2 MS. PATEK: We don't think we have a defense and  
3 indemnification obligation, and there's a grievance.  
4 Sometimes as the case proceeds and through the process, the  
5 city may determine we think we may not have an obligation to  
6 indemnify, so we don't know when that --

7 THE COURT: Um-hmm.

8 MS. PATEK: -- is going to arise. And so that's  
9 why --

10 THE COURT: Um-hmm, of course.

11 MS. PATEK: -- we're trying to get our arms around  
12 what's out there and work with the city to try to figure out  
13 a resolution for that.

14 And the last thing is to the extent because as the  
15 collective bargaining agreements have provided and as has  
16 historically, to my understanding, been the case, it has been  
17 the city's obligation to provide a defense to the extent any  
18 of these claims is peeled off and put into ADR. If there is  
19 not going to be a unified defense in that case, we would ask  
20 that the city through the ADR procedures pay the cost of  
21 defense for the current or former public safety union member  
22 who is part of that process, so --

23 THE COURT: And that's something that's done in the  
24 ordinary course outside of bankruptcy?

25 MS. PATEK: In the ordinary course -- and, again, I

1 will let Mr. Moore or perhaps Mr. Goodman, who is on the  
2 other side of these cases, address it, but my understanding  
3 is in the ordinary course, the city is defending these cases  
4 generally through corporation counsel, on occasion through  
5 outside counsel. There is generally a unified defense that's  
6 provided, and then at some point, either after judgment or  
7 along the process, a determination is made, and once the case  
8 is resolved, typically, in the absence of some kind of  
9 final -- in the absence of a final adjudication, that there's  
10 no indemnification obligation, these individuals are  
11 indemnified, and so that's --

12 THE COURT: Okay.

13 MS. PATEK: That's my understanding of how that  
14 works.

15 THE COURT: So you want to preserve those issues.

16 MS. PATEK: Correct; correct. And we're prepared --  
17 and we've been working with the city to continue to work with  
18 the city, and I understand, you know, the concerns about  
19 pace. With the Ryan motion, I think that we are generally in  
20 agreement, especially with the -- you know, on the issue of  
21 good faith, the indemnification obligation, as long as our  
22 rights are preserved to protect that and that we're not  
23 handing the decision on whether or not there's an  
24 indemnification obligation over to the city, I think we are  
25 comfortable --

1 THE COURT: Okay.

2 MS. PATEK: -- with that case proceeding. And the  
3 last little -- on the Ryan motion, there was an order. They  
4 talked about collection. We would like no kind of proceeding  
5 supplementary to judgment at all until further order of this  
6 Court against the particular public safety union member who  
7 might be affected.

8 THE COURT: So by that you mean not even like a  
9 creditors' examination?

10 MS. PATEK: Correct. I think these folks have  
11 enough to deal with at this point.

12 MR. GOODMAN: Good morning, your Honor. Much of  
13 what has been said does not address the interests or concerns  
14 of Deborah Ryan. However, I would just like to clarify  
15 something that Mr. Ellman said that I think was somewhat  
16 confusing, which is that this morning we filed a motion. We  
17 did, indeed, file a motion, but it was not a motion to  
18 substitute Walter Swift, another action, in the underlying  
19 Ryan motion to set aside the stay. It was a motion to  
20 substitute Mr. Swift as an objector to the city's --

21 THE COURT: Right.

22 MR. GOODMAN: -- ADR plan. I don't know if the  
23 Court has had a chance to see that motion.

24 THE COURT: Would you put your appearance on the  
25 record?

1 MR. GOODMAN: William Goodman on behalf of Deborah  
2 Ryan. I apologize, your Honor. So, as I said, I do not know  
3 whether the Court has had an opportunity to see --

4 THE COURT: I did. I read it.

5 MR. GOODMAN: Oh, good. And I did not know that Mr.  
6 Keelean would be here. I served counsel with paper copies of  
7 the motion and the exhibit, and I will give Mr. Keelean a  
8 copy at the end of this motion this morning. But at any  
9 rate, the main point there is that while we are in agreement  
10 in principle with the proposed order that -- with regard to  
11 the Ryan case that was presented this morning to the Court,  
12 we do want to urge the Court to consider that -- the systemic  
13 issues that were raised in Ms. Ryan's objections and for that  
14 specifically with regard to the ADR process, and paragraphs  
15 7(a) through 7(g) of the proposed Swift objections identify  
16 those as well. And the reason that this is being brought  
17 belatedly -- and I concede that -- is because the issue of  
18 the debtor -- the City of Detroit has done a 180 essentially  
19 on the question of whether or not they were going to  
20 stipulate to our motion to set aside, and both Ms. Ryan and  
21 other -- Mr. Swift, for example, who was relying upon those  
22 objections as they might relate to his case and so many  
23 others, was somewhat taken by surprise by that, so that's by  
24 way of an apologia. Now, you know --

25 THE COURT: Well, but Mr. Swift, through counsel,

1 did have an opportunity to timely object. Yes?

2 MR. GOODMAN: I concede that, and he did not timely  
3 object. I concede that as well. However, as I said, the  
4 issues which he would have raised and does raise had already  
5 been raised by Ms. Ryan, and there was no reason to  
6 anticipate or expect that that would -- that essentially that  
7 rug would be pulled out from under him, and -- but I concede  
8 that it's late. Other than that, I have nothing to say.  
9 I'll answer any questions that the Court may wish to pose at  
10 this time.

11 THE COURT: Well, I guess I'm interested in your  
12 response to the city's concern that to carve out a class of  
13 cases that assert constitutional claims from the ADR  
14 procedure denies it and, therefore, the other creditors in  
15 the case the benefit of the efficiency that's built into it,  
16 and there are, of course, also other administrative issues.  
17 How does one decide whether one -- whether a particular case  
18 is one that should be carved out if we were to create an  
19 exception as opposed to one that shouldn't be carved out if  
20 there is such an exception?

21 MR. GOODMAN: Understood. Keep -- I would like to  
22 emphasize for the Court and for counsel in this matter that  
23 Ms. Ryan's objections and now Mr. Swift's objections to the  
24 proceedings, as it relates to them, are essentially  
25 objections with regard to the fine-tuning of the plan and not

1 necessarily an objection with regard to the applicability of  
2 any ADR process to any Section 1983 case.

3 THE COURT: Okay. So what fine-tuning would you  
4 propose?

5 MR. GOODMAN: I would propose that there be a  
6 separate form of mediative or facilitative process with  
7 regard to Section 1983 cases involving persons with some more  
8 direct experience, knowledge, and skill in these areas than  
9 one finds routinely over at the Wayne County Mediation  
10 Tribunal with which I'm also quite familiar.

11 THE COURT: So who or what would that be?

12 MR. GOODMAN: I'm sorry.

13 THE COURT: Who or what would that be?

14 MR. GOODMAN: That would be subject to a process of  
15 identification, selection of skillful practitioners, defense  
16 and plaintiff's practitioners in this area. I am sure --  
17 confident I could sit down with Mr. Keelean and -- over a  
18 process of a couple days and provide a list of 50 to a  
19 hundred such lawyers for the Court --

20 THE COURT: Um-hmm.

21 MR. GOODMAN: -- and others as well. They don't  
22 have to be lawyers, by the way.

23 THE COURT: So your primary objection is that the  
24 personnel and the procedures of the ADR system in the Wayne  
25 County Mediation Tribunal are not suited to these kinds of

1 claims?

2 MR. GOODMAN: That's one of the objections. Another  
3 objection goes to the availability of both attorneys' fees  
4 and punitive damages, which are excluded from the current  
5 proposed ADR plan, and which are built into the  
6 constitutional protection, as I understand the law on  
7 jurisprudence in this area, and to deprive it is a  
8 constitutional violation, I would say, and, therefore, that  
9 would have to be readjusted and modified to some degree.

10 THE COURT: Those two?

11 MR. GOODMAN: Those are the two that I can think of.  
12 There may be others --

13 THE COURT: Okay.

14 MR. GOODMAN: -- spelled out in the objections as  
15 well that have --

16 THE COURT: Thank you.

17 MR. GOODMAN: -- slipped my mind.

18 THE COURT: Anyone else want to be heard on this?

19 MR. ROMANO: Your Honor, we'd like to be heard.

20 THE COURT: Step forward, sir.

21 MR. ROMANO: Good morning, your Honor. Dan Romano  
22 on behalf of a whole host of plaintiffs. We filed an  
23 objection with the Court listing about 91 plaintiffs we  
24 represent in different causes of action. Some of the  
25 plaintiffs are in 1983 actions, and some of the concerns we

1 have have been raised by Mr. Goodman. However, we see there  
2 being an inherent problem with the process for a number of  
3 other reasons. The list of litigants that we were given by  
4 the city includes people that are -- this could be cleared  
5 up -- includes people that have already been dismissed and  
6 settled like a year, two years ago. It also includes lists  
7 of people that have already been through ADR processes and  
8 are actually either in the process, were in the process of  
9 setting hearings, actually having hearings at arbitrations,  
10 and then those were stayed. They also involve people that  
11 have settled their claims and are waiting for distributions  
12 after exchanging releases. They also include the people  
13 that --

14 THE COURT: What's the problem with all this?

15 MR. ROMANO: Well, the problem with all that is how  
16 can -- are those going to all go through again the process?

17 THE COURT: Why do you think they would?

18 MR. ROMANO: Because there's no clarification in the  
19 process in the order that was submitted by the city that  
20 those are treated differently, and when they gave the list of  
21 people that were included in this process, it didn't say that  
22 those people were excluded from it. And I don't know how  
23 those people are going to be dealt with either, your Honor,  
24 because there's issues also with when -- as Mr. Goodman  
25 talked about, the difference between individual claims and



1 claims against the city. At the end of the day when there's  
2 a number put on that claim for an individual person, if  
3 there's a discharge for the city, will there be a discharge  
4 for the individual? I mean I --

5 THE COURT: Why does that matter?

6 MR. ROMANO: -- don't know because the process --

7 THE COURT: Why does that matter?

8 MR. ROMANO: Because -- it matters a lot, your  
9 Honor, because if there's a discharge for the city, then we  
10 can -- and there's not a discharge for the individual, we can  
11 go after the individual claims still so my clients will be  
12 compensated.

13 THE COURT: Only after the stay is lifted.

14 MR. ROMANO: Correct. But it doesn't indicate  
15 that -- I think the language in the order that was presented  
16 by the --

17 THE COURT: That's a plan question, not an ADR  
18 question, isn't it?

19 MR. ROMANO: Well, not really because I think the  
20 ADR -- the order that was presented was that the final  
21 findings of any of these processes was to put a -- set a  
22 value for discharge, so if it's setting a value for discharge  
23 for even individuals that may then ultimately be collectible,  
24 that's sort of an unnecessary process. Also, it seems to  
25 include -- it seems to include us in a process that incurs

1 much more expense for things that have already transpired in  
2 many cases, and also what's the difference between this  
3 process for individual claimants and the process for filing a  
4 proof of claim when either is subject to discharge? We have  
5 to consider the expenses to our clients and to ourselves for  
6 going through this process.

7 THE COURT: The proof of claim is required  
8 regardless; right?

9 MR. ROMANO: Yes, but the proof of claim preserves  
10 the right just like this process would have. It's just about  
11 getting a value for discharge. And all that does is make my  
12 clients put a lot more money forward for no reason.

13 THE COURT: Why?

14 MR. ROMANO: Because we have to go through a process  
15 in some cases where we've already been through it, and,  
16 secondly, when we have to go through a process to get a  
17 value --

18 THE COURT: Oh, that's what you were talking about  
19 before.

20 MR. ROMANO: Yes.

21 THE COURT: But the proof of claim is something the  
22 Bankruptcy Code requires. There's nothing I can do about  
23 that.

24 MR. ROMANO: No. I'm not asking you to do that,  
25 your Honor. I'm saying that this is redundant to the proof

1 of claim by the way the order says the relief given is. The  
2 relief is to discharge the claims, to set a value for  
3 discharge. What's the difference other than extra cost to  
4 the plaintiffs versus filing a proof of claim?

5 THE COURT: Well, but isn't the answer to that  
6 simply that under the Bankruptcy Code this Court doesn't have  
7 the jurisdiction to fix the claims for personal injury or  
8 wrongful death, so they've got to be tried somewhere else  
9 regardless?

10 MR. ROMANO: Well, your Honor, in these particular  
11 claims, there's issues again with not just -- we talked about  
12 the 1983 claims, but there's also the issues with the  
13 individual claims versus the city for motor vehicle ownership  
14 as well, a number of issues. Number one is the city is a  
15 self-insured entity. There's PIP claims, which if they reach  
16 an end and they're discharged, what -- it doesn't talk about  
17 in the ADR whether those are going to be taken over by  
18 another entity, whether they're collectible through the  
19 Michigan Property Guaranty Association, whether there's  
20 discharge for the individuals in those cases, too, like if  
21 they're driving a city-owned vehicle.

22 THE COURT: So you're raising discharge issues that  
23 I can't deal with now. These are plan questions.

24 MR. ROMANO: Well, they're also -- this process,  
25 though --

1 THE COURT: Just to give you a number.

2 MR. ROMANO: Well, why is that any different than  
3 the number that we would place in a proof of claim without  
4 this process?

5 THE COURT: It's not.

6 MR. ROMANO: So why should the plaintiff incur extra  
7 expense?

8 THE COURT: It's a way to fix the amount of the  
9 claim.

10 MR. ROMANO: Right.

11 THE COURT: What the consequence of that amount is  
12 either for the city or for other parties is a plan question,  
13 and I think the order is crystal clear about that.

14 MR. ROMANO: Well, what about fixing the problem  
15 with these claims that have already been through the process  
16 or are waiting in different steps in the process --

17 THE COURT: That's a good question. That's a good  
18 question.

19 MR. ROMANO: -- and the claims that have already  
20 been settled? Are those supposed to --

21 THE COURT: Right.

22 MR. ROMANO: -- be going through this process?

23 THE COURT: That's another good question.

24 MR. ROMANO: There's a --

25 THE COURT: Any other good questions?

1           MR. ROMANO: I don't think so, not according to the  
2 Court.

3           THE COURT: Let's see what the answers are, you  
4 know, because those are --

5           MR. ROMANO: Right.

6           THE COURT: You know, we don't -- I'm sure nobody  
7 wants to, you know, duplicate effort, so let's just get it  
8 clarified.

9           MR. ROMANO: Okay. Thanks, your Honor.

10          THE COURT: Anyone else want to speak? Step  
11 forward, please, sir.

12          MR. SANDERS: Good morning, Judge. My name is  
13 Jeffrey Sanders. I've been a designated creditor in this  
14 particular case, and I'd just like to represent that I  
15 believe that approving this motion for this alternative  
16 dispute resolution basically condones criminal oversight in  
17 and of itself insofar as I guess the City of Detroit would  
18 aspire to basically depart from the mandates of the law  
19 itself and employ some other process or method, which  
20 basically violates, I guess, the mandates of, you know, due  
21 process and equal protection of law and so on and so forth.

22          THE COURT: You know, that's such an interesting  
23 issue that's -- you know, it's been debated for as long as  
24 we've had alternative dispute resolution. Ultimately,  
25 however, if any particular party like yourself wants the

1 legal process invoked for a trial with a jury and all of  
2 that, to the extent the party is entitled to it, they get it.  
3 They get it. Is that what you want?

4 MR. SANDERS: Actually, what I want -- I believe  
5 what I want -- personally, I want this thing to be addressed  
6 and resolved and adjudicated in a lawful manner --

7 THE COURT: Yeah.

8 MR. SANDERS: -- and -- as opposed to --

9 THE COURT: Well, you're entitled to that, and  
10 there's nothing in this that will deprive you of that.

11 MR. SANDERS: An alternative dispute resolution?

12 THE COURT: It's just a way to see if the case can  
13 be settled. If it can't be settled, you get your full legal  
14 rights.

15 MR. SANDERS: Okay. So in the event that the City  
16 of Detroit, they just refuse to settle, they refuse to  
17 acknowledge a claim, they refuse to refute it, they just  
18 refuse overall to resolve it --

19 THE COURT: They're entitled to do that just like  
20 you're entitled to pursue your claim.

21 MR. SANDERS: And so if it has criminal implications  
22 that are made known to the Court, then what?

23 THE COURT: That's not a question I can answer  
24 because this is not a criminal court. This is a Bankruptcy  
25 Court.

1 MR. SANDERS: Okay.

2 THE COURT: Criminal issues get resolved somewhere  
3 else, thank you. Anyone else want to be heard? Sir?

4 MR. ELLMAN: Your Honor, Jeffrey Ellman from Jones  
5 Day on behalf of the city again. I'd be happy to answer --  
6 address a couple of the points that were raised if that's  
7 helpful to the Court.

8 THE COURT: Yes.

9 MR. ELLMAN: The last -- the person prior to the  
10 last objector in the red tie -- I don't know his name.

11 THE COURT: Mr. Romano?

12 MR. ELLMAN: What's that?

13 THE COURT: Mr. Romano?

14 MR. ELLMAN: Mr. Romano. Thank you. I'm not sure  
15 which party he represents, but he raised a couple points. I  
16 just wanted to answer how they would be addressed. As far as  
17 parties who have been through the process before, we tried to  
18 address this to some extent, and it's in a footnote in our  
19 procedures. If you've been through case evaluation before,  
20 you've been through this mediation process, case evaluation  
21 process, it's not going to happen again unless the parties  
22 agree that it's a good idea to try it again, so in that case  
23 what would happen is you'd have offer exchange. We'd make an  
24 offer. It could be as fast as the party says no, and it's  
25 over, or there could be a discussion and a -- and a

1 settlement discussion out of that offer exchange process, but  
2 we would not do the case evaluation again if it's been done  
3 unless the parties both agreed that it was a useful thing to  
4 do. As far as -- I guess that was maybe the main --

5 THE COURT: What footnote is that?

6 MR. ELLMAN: It's Footnote 6, and I have an updated  
7 draft. I think it's probably Footnote 6 in what you have as  
8 well, and it's in Section -- it's at Roman numeral II,  
9 capital B, case evaluation. It's the first footnote in that  
10 section that refers to that. We certainly don't want to  
11 waste people's time doing something that's been done,  
12 although we don't believe this is a highly expensive process.

13 Mr. Goodman raised a couple of points I can address,  
14 and I'll do them in reverse order. He made a point about no  
15 attorneys' fees being permitted and certain other kinds of  
16 claims not being permitted in this process. That is in our  
17 order -- or in our procedures but only as to arbitration,  
18 binding arbitration, which is totally voluntary. If he  
19 doesn't like those procedures, he doesn't have to agree to  
20 them. We have updated the order -- or excuse me -- the  
21 procedures to make clear that the parties can agree to  
22 include all those things if they want to, so it's -- make it  
23 a flexible process. The parties could agree to include  
24 everything, have a fight about attorney' fees and everything  
25 else, but --



1           THE COURT: So a party that's seeking punitive  
2 damages need only opt out of arbitration?

3           MR. ELLMAN: Well, just not agree to it. Everyone  
4 has opted out until they agree to be in, so there's no  
5 automatic way into arbitration. You have to agree to it.  
6 Both parties have --

7           THE COURT: If they opt in, they waive their  
8 punitive damage claim.

9           MR. ELLMAN: Or we will have to agree to some other  
10 approach to it because we could agree with them that we will  
11 include that in the process, so it's a streamlined process.  
12 That's by agreement, so -- and that includes the city. The  
13 city doesn't have to agree to arbitration either. The city  
14 can say, no, thank you, to arbitration, so that's that point.

15           As far as having a separate process separate and  
16 apart from the MTA process for certain kinds of claims, we  
17 really tried to avoid that because we're going for simplicity  
18 here, something that's easy to administer and user friendly.  
19 My understanding is that these types of constitutional claims  
20 do go to the MTA and that they have skilled practitioners.  
21 Not every one of the courts necessarily sends every one of  
22 these claims to that process, but they have been sent to that  
23 process and have been dealt with successfully.

24           THE COURT: Well, but simplicity has to be balanced  
25 against effectiveness.

1           MR. ELLMAN: It does, but my understanding, as I  
2 said before, the city's view is that this process has been  
3 extremely effective in reaching settlements, including of  
4 these types of claims. That's their experience in this  
5 process. The very high majority of cases that go to the  
6 Wayne County Tribunal get settled, and so they see no  
7 reason --

8           THE COURT: Including 1983 actions?

9           MR. ELLMAN: That is my understanding, yes.

10          THE COURT: Do you have any objection if I check  
11 with my chief district judge on that point?

12          MR. ELLMAN: I certainly have no objection to that  
13 whatsoever.

14          THE COURT: Do you have any objection to that?

15          MR. GOODMAN: I'd just like to say that I'm going --  
16 Mr. Romano has a much larger caseload of 1983 cases than we  
17 do. We're a small law firm. However, my experience has been  
18 I've never served in that capacity in the Wayne County  
19 Mediation Tribunal, and I've never been before it because  
20 routinely when one asserts a Section 1983 claim and brings it  
21 in Wayne County Circuit Court, the City of Detroit removes  
22 that claim to federal court, and while some federal cases get  
23 sent to the Wayne County Mediation Tribunal, very few do. My  
24 experience is that none of ours have ever had that happen.

25          THE COURT: My question to you, Mr. Goodman, was do

1 you have any objection if I check with my chief district  
2 judge regarding the effectiveness of the Wayne County  
3 Mediation Tribunal in 1983 actions?

4 MR. GOODMAN: I not only have no objection, I would  
5 highly recommend and urge the Court to do so.

6 THE COURT: Mr. Romano, do you have any objection if  
7 I do that?

8 MR. ROMANO: No, your Honor, but I think the Court  
9 has to understand that in 1983 it's only -- we only go to  
10 case evaluations by agreement -- it's not mandatory if it's  
11 filed in federal court -- and also, your Honor, that as far  
12 as other cases, you can check with the tribunal, but any  
13 other tort cases I think the success rate of Michigan  
14 mediation or case evaluation as it's called now is about 16  
15 percent of mutual acceptance, and that's high, the higher  
16 counties. Wayne might be lower, so I don't think that's  
17 really accurate as far as its effectiveness.

18 MR. ELLMAN: Well, I'd just confirm with my client  
19 their view of this being highly effective, and I'll just for  
20 one additional -- I don't know how you measure statistics in  
21 different ways, but from the city's experience this process  
22 has been effective to both settle claims directly through the  
23 process or also to establish a basis for a later settlement.  
24 Many of these cases settle later. It's because of what  
25 happened in that process. It may not have settled at the

1 process.

2 THE COURT: Yeah. Measuring success of mediation  
3 programs is a very tricky and slippery business because if  
4 you just look at what settles that day, you're going to get  
5 one number, but if you look at what settles a month later  
6 because of that process, you're going to get a much bigger  
7 number, so -- all right. Since I have your consent, I will  
8 consult with Chief Judge Rosen on the effectiveness of the  
9 Michigan Tribunal -- the Mediation Tribunal for 1983 actions.  
10 If it doesn't appear to the Court that that is an effective  
11 process, I may come back to you to design one from scratch  
12 for this case, so that part of this process may have to be  
13 delayed a bit.

14 MR. ELLMAN: We understand, your Honor.

15 THE COURT: Did you want to address Ms. Patek's  
16 concerns?

17 MR. ELLMAN: Yes. I have a -- a few of the points  
18 that she made I can try to address. As far as receiving  
19 information as one of her concerns, we have provided what I  
20 understand is the information we have about the pending cases  
21 that involve her members that we know of. We're certainly  
22 happy to continue to provide that information and cooperate  
23 with them. I'm not sure it has anything to do with a  
24 provision of the ADR order or procedures, but we certainly  
25 have committed to working with her on that.

1           With respect to cases that have been filed only  
2           against her members or the union's members and not against  
3           the city, I'm not sure exactly what she's asking for. It  
4           sounds like those were outside of the scope of this order as  
5           well, and they'll be dealt with in the normal course.

6           THE COURT: No. If I understood her correctly, what  
7           she wants is a specific understanding, maybe even explicitly  
8           in the order, that nothing in the order impacts the  
9           substantive or procedural rights of her -- of the individuals  
10          to pursue their claim against the city for indemnification or  
11          defense in the ordinary course.

12          MR. ELLMAN: I think all that is fine, your Honor.  
13          One thing we don't agree with, and we've traded some  
14          language, as Ms. Patek indicated, I don't think this order is  
15          a place to say the city will defend these parties or will  
16          indemnify them.

17          THE COURT: And I agree with that. This is a  
18          procedures order.

19          MR. ELLMAN: One is going to be unique, and I agree  
20          that it'll be dealt with in the normal course on their merits  
21          and the way they're dealt with, so to that extent, I think  
22          we're in agreement. I personally don't believe and haven't  
23          believed it needed to be something stated in the order, but  
24          if the Court --

25          THE COURT: I think it's better --

1 MR. ELLMAN: -- disagrees --

2 THE COURT: I think it's better if it is, so I'm  
3 going to ask the two of you to consult with each other on  
4 some language --

5 MR. ELLMAN: We'll do that.

6 THE COURT: -- that addresses Ms. Patek's concerns,  
7 and if you can't agree, get me on the phone, and I'll help  
8 you.

9 MR. ELLMAN: Yes. And I think the last point that I  
10 had in my notes that she raised about the no supplemental --  
11 supplementary proceedings post-judgment, I assume that's  
12 something we can work out --

13 THE COURT: Please.

14 MR. ELLMAN: -- as far as language. That's not a --  
15 that's not an issue for us.

16 THE COURT: Okay.

17 MR. ELLMAN: I think that covers issues I had  
18 written down unless the Court has questions.

19 THE COURT: No. That's it.

20 MR. ELLMAN: Thank you.

21 THE COURT: All right. So let me ask you to submit  
22 a revised order after you've had a chance to discuss this  
23 further with Ms. Patek. In the meantime, I'm going to  
24 consult with Chief Judge Rosen on the issue of the 1983  
25 actions, and if I decide that needs to be carved out of this,

1 I will effectuate that. If I decided that there's no basis  
2 to carve them out, then I'll consider the city's order.

3 MR. GOODMAN: Your Honor, I take it --

4 THE COURT: Stand by the microphone for me.

5 MR. GOODMAN: William Goodman again. I take it,  
6 your Honor, that the Court is then going to enter an order  
7 setting aside the stay with regard to Ms. Ryan's case and --

8 THE COURT: Yes. You may submit a stipulation and  
9 order to do that.

10 MR. GOODMAN: -- and that I may so advise Judge  
11 Goldsmith, who is quite interested in that issue.

12 THE COURT: If you feel like that's something you  
13 need to do, you may tell him it is forthcoming.

14 MR. GOODMAN: Thank you.

15 THE COURT: Okay. Anything else on this morning's  
16 docket? Okay. We'll be in recess until 2:30.

17 THE CLERK: All rise. Court is in recess.

18 (Proceedings concluded at 11:24 a.m.)

## INDEX

WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

December 18, 2013

\_\_\_\_\_  
Lois Garrett